

**PT 00-8**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

**CHICAGO VIETNAM  
VETERANS AND  
FAMILY ASSISTANCE  
PROGRAM, INC.  
APPLICANT**

**v.**

**ILLINOIS DEPARTMENT  
OF REVENUE**

**Nos: 98-PT-0113  
(97-16-1180)**

**P.I.N: 21-30-409-007**

**Alan I. Marcus  
Administrative Law Judge**

**RECOMMENDATION FOR DISPOSITION**

**APPEARANCE:** Mr. Robert Habib, attorney, on behalf of the Chicago Vietnam Veterans and Family Assistance Program.

**SYNOPSIS:** This proceeding<sup>1</sup> raises the limited issue of whether any or all parts of real estate identified by Cook County Parcel Index Number 21-30-409-007

1. This case initially involved consolidated appeals of three separate exemption denials, all on separate properties owned by this applicant. The Parcel Index Numbers and their corresponding docket numbers, as assigned by the Department's Office of Local Government Services, were as follows:

<b>P.I.N.</b>	<b>DOCKET NUMBER</b>
21-30-409-007	97-16-1180
20-23-109-001	97-16-0781
20-23-106-041	97-16-0782

The Office of Administrative Hearings subsequently consolidated all three of these matters into Administrative Hearings Docket No. 98-PT-0113. At hearing, applicant's counsel made, and the ALJ subsequently granted, an on-the-record motion to withdraw its appeals as to docket numbers 97-16-781 and 97-16-782. Tr. pp. 3-4. As consequence thereof, real estate identified by Cook County Parcel Index Numbers 20-23-106-001 and 20-23-106-041 shall remain on the tax rolls for the 1997 assessment year, as set forth in the Department's determinations that pertain thereto. Consequently, this Recommendation shall not contain any further discussion of the taxable status of those parcels.

(hereinafter the “subject property”) were "actually and exclusively used for charitable or beneficent purposes ..." as required by Section 15-65 of the Property Tax Code, 35 ILCS 200/1-3 *et seq.* during the 1997 assessment year.

The controversy arises as follows:

The Chicago Vietnam Veterans and Family Assistance Program (hereinafter the “applicant”) filed Real Estate Tax Exemption Complaints with the Cook County Board of (Tax) Appeals (hereinafter the “Board”) on April 3, 1998. The Board reviewed applicant’s complaint and recommended to the Illinois Department Of Revenue (hereinafter the “Department”) that part of the subject property be exempted from real estate taxation.

The Department formally disagreed with the Board’s recommendation by means of a determination dated October 29, 1998. (Dept. Ex. No. 2). Said determination found that the entire subject property was not in exempt use. (*Id.*) Applicant filed a timely appeal to this denial and later presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, I recommend that the Department’s determination be modified to reflect that 85% of the subject property be exempt from 1997 real estate taxes.

**FINDINGS OF FACT:**

1. The Department’s jurisdiction over this matters and its position therein are established by the admission of Dept. Ex. Nos. 1, 2, 4.
2. The Department’s position in this matter is that the entire subject property is not in exempt use. Dept. Group Ex. No. 4.

3. On November 8, 1999, the Director of Revenue issued a Notice of Decision that approved a Recommendation for Disposition in Departmental Docket No. 96-16-711. Said recommendation found, in relevant part, that 38% of the subject property qualified for exemption from 1996 real estate taxes under Section 15-65 of the Property Tax Code. Administrative Notice.
4. The subject property is located at 7851 S. Escanaba, Chicago, IL 60649 and improved with a 4 story, mixed use building that occupies 44,107 square feet and contains the following:

<b>Area/Use<sup>2</sup></b>	<b>Square Footage</b>
Basement that contains mechanical equipment (HVAC, etc.)	10,980.00
<b>First Floor</b>	
Six Store Front Areas:	
Storefront leased to locksmith that applicant concedes is not in exempt use	1,009.00
Storefront used by applicant as "Thrift Shop" for homeless veterans	929.00
Storefront leased to grocery store that applicant concedes is not in exempt use	3,017.00
Storefront used by applicant for office space	1,138.33 <sup>3</sup>
Storefront leased by applicant to Rev. Ronald Trotter (hereinafter "Rev. Trotter")	1,138.33
Storefront leased by applicant to Rev. Gloria Mock (hereinafter "Rev. Mock")	1,138.33
Storage Garage and Stairs that services residential areas	1,428.00
<b>Total First Floor</b>	<b>9,798.00<sup>4</sup></b>
<b>Second Floor</b>	
Plumbing area (pipes, drains, etc.) that serves entire building	1,343.00
Adjacent Stairwell that services residential area	98.00
Residential Apartment Space (Exact number of units on unspecified, as were the location and square footage of each individual apartment unit)	<u>7,392.00</u>

2. The uses described in this and all subsequent Findings of Fact shall be understood to be 1997 uses unless context specifies otherwise.

3. The specification sheet on which this chart is based (Applicant Ex. No. 21) does not indicate the exact square footage of this particular storefront area. Nor does it specify the exact square footage of the storefronts applicant leased to Revs. Trotter and Mock.

This document does, however, indicate that the combined square footage for all three of these storefronts is 3,415 square feet (Applicant Ex. No. 21). Furthermore, the diagrams and floor plans submitted as Applicant Group Ex. No. 1, Docs D, E, and F, although somewhat illegible in their dimensional markings, do indicate that the area of each of the three storefronts is about equal, with the one leased to Rev. Mock being negligibly larger. Thus, for present purposes, 3/3,415 sq. ft. = 1,138.33 sq. ft. per storefront.

4. Rounded from 9,797.99.

<b>Total Second Floor</b>	<b>8,833.00</b>
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<b>Area/ Use</b>	<b>Square Footage</b>
<b>Third Floor</b> 100% Residential Apartment Space (Exact number of units on third floor were unspecified, as were the location and square footage of each individual apartment unit)	<b>7,248.00</b>
<b>Fourth Floor</b> 100% Residential Space (Exact number of units on fourth floor were unspecified, as were the location and square footage of each individual apartment unit)	<b>7,248.00</b>
<b>Total Square Footage of Improvement</b>	<b>44,107.00</b>

Applicant Group Ex. No. 1; Tr. pp. 9-13, 17.

5. Applicant sold only donated items at the thrift store. It did not charge more than \$1.00 for any of the items that it sold. Tr. pp. 18-19.
6. Applicant's sales income from the thrift store was only \$300.00 in 1997. It applied all of this income toward utilities and other building maintenance costs.  
*Id.*
7. Rev. Mock's church, the Peace and Love Prayer Band (hereinafter "Peace and Love") was incorporated under the General Not For Profit Corporation Act of Illinois, on March 3, 1988. Its organizational objectives are to hold non-denominational Christian prayer services and Bible studies. Applicant Group Ex. No. 2; Tr. pp. 19-20.
8. An ordained minister of the Christian Faith Ministry, Rev. Mock conducted regular Sunday prayer services for Peace and Love in the area she leased from applicant. Attendance at these services was between 20 and 31 persons. Tr. pp. 20-23, 31.

9. Rev. Mock also conducted, in her leased space, recurrent Wednesday evening Bible studies, which were regularly attended by at least 20 persons. *Id.*
10. Rev. Trotter's church, Saints of the Most High, was incorporated under the General Not For Profit Corporation Act on November 13, 1985. Its general corporate purposes are to operate a non-denominational Christian church. Applicant Ex. No. 3.
11. An ordained minister of the Monumental Faith Church, Rev. Trotter conducted weekly services and Bible Studies in the space he leased from applicant. Attendance at the weekly services, which were held on Sundays, was between 10 and 15 persons. Attendance at the Bible Studies, which were held on Wednesday evenings, was about the same. *Id.*
12. Applicant applied all of the rental income it received from Revs. Trotter and Mock toward its own operating expenses. Tr. p. 23.
13. Applicant's use of the residential areas located on the second, third and fourth floors, which contained 24 separate residential units, was as follows:

<b>Number of Units</b>	<b>% of Total Residential Space</b>	<b>Use</b>
14	58%	Rent-free or very low rent housing for homeless veterans
2	8%	Under repair or rehabilitation for eventual use as additional housing units for homeless veterans
5	21%	Storage for homeless housing program
3	13%	Totally vacant

Tr. pp. 34-35.

14. Applicant did not charge rent in most cases because it wanted to provide the residents with an opportunity to obtain employment and stabilize themselves. It did, however, subsequently expect the residents to pay some minimal rent, which ranged from \$50.00 to \$150.00, once they became stabilized. Tr. p. 27.

15. Applicant did not (and will not) evict any resident solely for failure to pay rent. It did, however, reserve the right to evict for other reasons, such as using illegal substances on the premises or violation of safety rules. *Id.*

**CONCLUSIONS OF LAW:**

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting 85% of the subject property from real estate taxes for 100% of the 1997 assessment year. Accordingly, under the reasoning given below, the determination by the Department that the entirety of said property was not in exempt use should be modified. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo v. Rose, 16 Ill. 2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

In furtherance of its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 **ILCS** 200/1-3 *et seq.* The provisions of the Code that govern disposition of the present matter are contained in the following excerpt from Section 15-65:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity.
- (b) beneficent and charitable organizations incorporated in any state of the United States, including organizations whose owner, and no other person, uses the property exclusively for the distribution, sale, or resale of donated goods and related activities and uses all of the income from those activities to support the charitable, religious or beneficent activities of the owner, whether or not such activities occur on the property[.]

35 **ILCS** 15-65(a), (b).

Statutes conferring property tax and other revenue-related exemptions are to be strictly construed, with all facts construed and debatable questions resolved in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Moreover, the party seeking exemption bears the burden of proving by clear and convincing evidence, that the property it is seeking to exempt falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

Here, the appropriate statutory exemption requires appropriate evidence that the property in question is owned by an entity that qualifies as an "institution of public charity[;]" and, that said property is "exclusively used" for purposes that qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Korzen").

The Department's determination herein (Dept. Ex. No. 4), which was based solely on lack of exempt use, coupled with the Recommendation for Disposition in Docket No. 96-16-711, of which I take administrative notice, establish that this applicant satisfies the exempt ownership requirement. Therefore, I shall omit further discussion of that requirement from this Recommendation and devote all remaining analysis to the true source of controversy herein, which is the extent to which the subject property was used for exempt purposes during 1997.

Analysis of that issue begins with recognition of one critical fact, which is that the subject property was used for multiple purposes throughout 1997. These uses included, *inter alia*: (1) providing rent-free housing to homeless veterans; (2) miscellaneous uses (office space, storage, renovation, thrift shop, etc.) connected therewith; (3) leasing to unrelated commercial entities; and, (4) leasing to non-commercial entities.

Where a tract is used for more than one purposes, there is nothing novel in exempting the part used for an exempt purpose and subjecting the remainder to taxation. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59, 64 (1971). In this case, applicant concedes that the areas leased to unrelated commercial entities (to wit, the grocery store and locksmith) were not in exempt use. Therefore, those areas, which occupy a combined total of 4,024 square feet, or 9% of the total building area,<sup>5</sup> should remain subject to 1997 real estate taxes.

With respect to the other uses, it is first noted that the Recommendation for Disposition in Docket No. 96-16-1711 contained a specific conclusion that the manner in which this applicant provided rent-free housing to homeless veterans qualified as a charitable use. The reasons for that conclusion were, in substance that: (1) the General Assembly had manifested a profound interest in alleviating the myriad of economic and

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5. 4,026 sq. ft./44,107 sq. ft. = 0.09128 (rounded) sq. ft. or 9%.



social ills associated with homelessness through enactment of the Homelessness Prevention Act, 310 ILCS 70/1, *et seq*, (hereinafter the "Act"); (2) applicant's program effectuated one of the Act's overall policy goals, which was to find cost-efficient solutions to the problem of homelessness; (3) such solutions lessened the government's burden with respect to providing housing for the homeless; and, (4) applicant did not operate its housing enterprise "with a view to profit" in violation of Section 15-65 because it did not charge rent to any homeless person that it housed.

It is technically true that each tax year constitutes a separate cause of action. Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App.3d 542 (1st Dist. 1981). Thus, a finding of exempt status in one tax year does not necessarily guarantee a finding of exempt status in another. *Id.* Nevertheless, applicant did not actually charge rent to most of the homeless persons that it housed during the tax year currently in question. (Tr. p. 27). Applicant also did not profit from any of the rents it did charge because the amounts thereof (between \$50.00 and \$150.00 per month) were nominal in relation to its operating costs. *Id.*

More importantly, applicant imposed rental charges only in instances where the residents could actually to afford make them and then based the amounts thereof solely on whatever sums the residents could manage to pay. *See, Small v. Pangle*, 60 Ill.2d 510, 518 (1975). (Imposing fees for services rendered does not *ipso facto*, defeat exempt status so long as applicant waives or reduces such fees in cases of financial need or otherwise accommodates those who are unable to pay in a manner that does not discriminate against their financial status).

For these reasons, and because applicant did not evict any resident strictly for failure to pay rent, I conclude that all areas of the subject property that were used in connection with applicant's homeless housing were "actually and exclusively used for charitable or beneficent purposes, " as required by Section 15-65, during the 1997 assessment year.

Such areas include: (1) the 14 residential units that applicant actually used for homeless housing (Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App. 3d 37 (5th Dist. 1994)); (2) the two units that applicant was developing for homeless housing (Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2<sup>nd</sup> Dist. 1987)); (3) the five apartment units and other areas that applicant used for storage Evangelical Hospitals Corporation v. Department of Revenue, 233 Ill. App.3d 225 (2nd Dist. 1991); and (4) the basement, the garage and its adjacent staircase, the second floor stairwell, the plumbing area and the storefront applicant used for office space. *Id.*

The above areas do not, however, include the three apartment units that were vacant throughout 1997. These units were neither occupied by homeless persons nor

used for any other specifically identifiable exempt purpose. *Accord, Antioch Missionary Baptist Church v. Rosewell*, 119 Ill. App.3d 981 (1st Dist. 1983) (vacant, boarded up church held non exempt). Therefore, these three units should remain on the tax rolls for 1997.

As concerns the storefronts applicant leased to Revs. Mock and Trotter, I first note that Section 15-40 of the Property Tax Code provides for the exemption of “all property used exclusively<sup>6</sup> for religious purposes<sup>7</sup> ...[.]” 35 ILCS 200/15-40. Based on the Articles of Incorporation and other documentation submitted as Applicant Group Ex. No. 2 and Applicant No. 3, I conclude that the churches headed by Revs. Mock and Trotter are the types of organizations whose property is subject to exemption under Section 15-40 if used for appropriate purposes.

In *Children's Development Center v. Olson*, 52 Ill.2d 332 (1972), (hereinafter “*Olson*”) the Illinois Supreme Court held that leaseholds, such as the ones held by Revs. Mock and Trotter, can qualify for exemption if: (1) both the lessor and the lessee qualify as exempt entities; and (2) the lessee uses the demised premises for purposes that would qualify as exempt if the lessee owned the property it is seeking to exempt, provided that neither the lessor nor the lessee are profiting from the enterprise. *Olson*, *supra* at 336.

My previous analysis has demonstrated that both applicant, and the churches headed by Revs. Mock and Trotter, are exempt entities. Furthermore, applicant’s executive director, Joann Williams, testified without rebuttal that: (1) her office is

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6. The word “exclusively,” when used in Sections 200/15-40 and other exemption statutes means “the primary purpose for which property is used and not any secondary or incidental purpose.” *Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue*, 243 Ill. App.3d 186 (4th Dist. 1993).

7. As applied to the uses of property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.

adjacent to both churches; (2) she often witnessed the lessees' activities firsthand; and (3) both lessees regularly and continuously used their leaseholds for Sunday prayer services and Wednesday evening Bible studies. Tr. pp. 20-23, 31.

Such uses, which were the only ones to which these leaseholds were put during 1997, qualify as being "exclusively for religious purposes" within the meaning of Section 15-40. Therefore, these leaseholds appear to qualify for exemption under Olson unless applicant's receipt of rental income therefrom violates the prohibition against leasing for profit contained in Section 15-65.

The Olson court explained that prohibition as follows:

It is unnecessary through accounting procedures to ascertain whether [the applicant/lessor] actually made a profit from the leasing. That is not the test. This court has often held that it is the primary use of the property and not the ownership that determines its taxable status. [citations omitted].

We likewise consider that it is the primary use to which the property is devoted *after the leasing* which determines whether the tax-exempt status continues. If the primary use is for the production of income, that is, "with a view to profit," the tax exempt status is destroyed. Conversely, if the primary use is not for the production of income but to serve a tax-exempt purpose the tax exempt status of the property continues though the use may involve the incidental production of income. Following the leasing, the primary use to which the property was devoted was serving the tax-exempt charitable purpose of the [lessee]. This did not destroy the tax-exempt status of the leased property although the letting produced a return to [the applicant-lessor].

Olson, *supra*, at 336. [emphasis added].

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People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911).

In this case, the primary purpose to which the leaseholds were put after leasing was “exclusively religious.” Hence, the above reasoning does not attach decisive (or even significant) legal impact to the fact that applicant obtained a financial return from the rental income generated by these leaseholds. Consequently, applicant’s receipt of such return does not contravene the provisions of Section 15-65 that bar exemption where the property is “leased or otherwise used with a view to profit.” 35 **ILCS** 200/15-65.

With respect to the thrift store, it is first noted that this area is somewhat unique because it is the only part of the property that is subject to the requirements of Section 15-65(b). In substance, that provision requires that: (1) the charitable owner must use the property exclusively for the distribution, sale or resale of donated goods and related activities; and, (2) the income derived from the activities must be used exclusively to support the charitable activities of the owner. 35 **ILCS** 15-65(b).

In First Presbyterian Church of Dixon v. Zehnder, 306 Ill. App.3d 1114 (2<sup>nd</sup> Dist. 1999), the court held in favor of exempting a thrift shop that furthered the altruistic goals of the church-owner by selling donated goods to the needy at very minimal cost. First Presbyterian Church, *supra*, at 1117. Here, applicant uses its thrift store for no purpose other than selling donated goods to homeless veterans at prices that range between 25¢ and \$1.00. (*See*, Tr. p. 18). Such use doubtlessly advances applicant’s overall mission of assisting homeless veterans and parallels the use found to be exempt in First Presbyterian Church. Therefore, applicant’s thrift store qualifies for exemption under the principles articulated therein.

In summary, the only areas of the subject property that do not qualify for exemption from 1997 real estate taxes under Sections 15-65(a) and (b) are: (1) the first

floor storefronts leased to the commercial locksmith and the grocery store; and, (2) the three vacant apartment units. The remainder of said property should be exempt according to the following computations:

<b>Factor</b>	<b>Associated Computation</b>
1. Residential Space Area	
A. 2 <sup>nd</sup> Floor	7,392 sq. ft.
B. 3 <sup>rd</sup> Floor	+7,248 sq. ft.
C. 4 <sup>th</sup> Floor	<u>+7,248 sq. ft.</u>
Equals Total Residential Space Area	21,888 sq. ft.
2. Percentage of Units Actually Used for Exempt Purposes	
A. Number of Residential Units Actually Used or Being Developed for Homeless Housing and Related-Purposes (Including Units Used for Storage) during 1997	21
B. Divided by Total Number of Residential Units	/24
C. Equals Percentage of Units Used for Exempt Purposes	88% <sup>8</sup>
3. Amount of Residential Area Used for Exempt Purposes	
A. Total Residential Space Area	21,888 sq. ft.
B. Multiplied by Percentage of Units Actually Used for Exempt Purposes	<u>X 88%</u>
C. Equals Total Amount of Residential Area Used for Exempt Purposes	19,261 sq. ft.
4. Other Exempt Areas	
A. Basement	10,980 sq. ft.
B. Thrift Shop	929 sq. ft.
C. Applicant's Storefront Office, Combined with Storefronts Leased to Revs. Mock and Trotter	3,415 sq. ft.
D. Storage Garage and Stairs that serviced residential areas	1,428 sq. ft.
E. Plumbing area	1,343 sq. ft.
F. Stairwell that services residential area	<u>98 sq. ft.</u>
Equals Total Square Footage in Other Exempt Areas	18,193 sq. ft.
5. Total Exempt Area	
A. Total Amount of Residential Area Used for Exempt Purposes	19,261 sq. ft.
B. Plus Total Amount of Square Footage in Other Exempt Areas	<u>18,193 sq. ft.</u>
C. Equals Total Amount of Exempt Space in Building as a Whole	37,454 sq. ft.
6. Total Percentage of Exempt Space in Building as a Whole	
A. Equals Total Amount of Exempt Space in Building as a Whole	37,454 sq. ft.
B. Divided by Total Building Area	<u>/44,107 sq. ft.</u>
C. Equals Total Percentage of Exempt Space in Building as a Whole	<u>85%</u> <sup>9</sup>

WHEREFORE, for all the above-stated reasons, it is my recommendation that:

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8. Rounded from 87.5.

9. Rounded from 0.8491622644932.

1. 85% of real estate identified by Cook County Parcel Index Number 21-30-409-007 be exempt from real estate taxes for 100% of the 1997 assessment year; but,
2. The remaining 15% of said real estate not be so exempt.

March 28, 2000  
Date

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Alan I. Marcus  
Administrative Law Judge